Justice Officials Back Transfer of Bush Records

Clinton White House Said to Favor Protection of Computerized Presidential Memos

By George Lardner Jr.
Washington Post Staff Writer

The Clinton Justice Department marched chin up into federal court yesterday and defended as proper a controversial agreement giving former president George Bush exclusive legal control of the computerized records of his presidency.

White House communications director George Stephanopoulos told a reporter that the decision to support the agreement was based on a determination that, like Bush's White House, the Clinton White House does not want a succeeding, potentially unfriendly administration pawing over its computer memos.

The agreement, signed by then-Archivist Don W. Wilson on Jan. 19, hours before Bush left office, enabled the outgoing administration to move thousands of tapes from the National Security Council (NSC) and other White House offices to the National Archives just before Clinton was sworn in.

U.S. District Judge Charles R. Richey listened skeptically to the government's claims that the transfer was intended to preserve the materials in line with court orders he issued in early January. He called yesterday's hearing to give the Archives and various White House offices an opportunity to show why they should not be held in civil contempt.

Justice Department lawyer David Anderson said that the hurried transfer of tapes was "not perfect," but he maintained that the flaws in the operation—such as the "accidental" overwriting of several backup tapes—fell far short of contempt.

The plaintiffs, led by Scott Armstrong, founder of the nonprofit National Security Archive, filed suit in 1989 to prevent destruction of the computer tapes of former president Ronald Reagan and then those of the Bush White House, especially those made by the NSC. They argued that the last-minute transfer of Bush's records, which included records from the Reagan era, was carried out for political, not preservationist, reasons and that the operation has endangered the tapes.

Michael Tankersley, a lawyer for Public Citizen, a consumer rights group, said some tapes from the Reagan White House show signs of deterioration and need to be copied as soon as possible. But the Archives has neither the equipment nor the software to read or make copies of any of the Bush or Reagan tapes.

"That is only the tip of the iceberg," Tankersley said. He said White House agencies such as the NSC could make copies, but under Bush's agreement with the Archives, the White House no longer has access to the records.

Anderson said that "there is no evidence of actual deterioration" of the tapes, but Tankersely said depositions taken by the plaintiffs in recent weeks showed that about 300 tapes, some of them dating to 1984, were "in immediate need of preservation copying."

The Justice Department lawyer told the court that acting Archivist Trudy H. Peterson approved a "long-term" preservation plan for the tapes on April 16, but the judge noted that the agency has no timetable and that budgetary constraints could delay the process.

"There's nothing that offends me more than the constant delays caused by a bureaucracy when it wants to avoid doing something," Richey said, adding that he would issue a ruling shortly.

Richey held in January that he had no jurisdiction over "presidential records" on the tapes, but he ordered that the defendant agencies take "all necessary steps" to preserve, without erasure, the "federal" records on the same tapes, such as memos between NSC employees.

While the new administration defended the Bush-Wilson agreement as part of a "good faith" effort to preserve the tapes, Tankersley denounced it as "a private records law" that has been used to supersede federal statutes "and the orders of this court."